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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Date of Decision: 13th May, 2025***
+ CM(M) 886/2025 & CM APPL. 28633/2025 & CM APPL.
28634/2025
M/S CONTRONICS SWITCHGEAR INDIA PVT. LTD.

.....Petitioner
Through: Mr. Jugal Baga with Mr. Sumit
Kaushik, Mr. Ritwik Sharma, Mr.
Charanjeet Khatana, Mr. Chetram
Kaushik, Mr. Anshu Sharma,
Advocates.

versus

M/S CORONET ENGINEERS PVT. LTD.

.....Respondent
Through: Mr. Ayush Garg, Advocate.

CORAM:
HON'BLE MR. JUSTICE MANOJ JAIN
J U D G M E N T (oral)

1. Respondent filed a commercial suit seeking recovery of Rs. 34,14,450.49/- approx.
2. Petitioner herein is defending the abovesaid commercial suit and is aggrieved by order dated 01.04.2025 whereby his request to summon one official from Canara Bank has been declined on the ground that the timelines provided in this regard are strict and for the reason that such request is belated one.
3. It is not an old case as the suit was instituted on 14.10.2024.
4. Learned Trial Court framed the issues on 27.02.2025 and same day, it also recorded that both the parties wished to examine two witnesses each,



tentatively.

5. Both the parties were, accordingly, directed to file *list of witnesses*, within two weeks.

6. Plaintiff (respondent herein) examined two witnesses and defendant, as per its list of witnesses, chose to examine three witnesses i.e. its AR, concerned staff of Omkara Transport Private Limited and concerned staff official from GST. It was also mentioned in the list that defendant may also be permitted to examine any other witness, with the permission of the Court.

7. The concerned staff official of Omkara Transport Private Limited has already been examined and the defendant, no longer, wishes to examine anyone from GST department.

8. The affidavit of the authorized representative of the defendant company has yet not been placed on record and it is apprised that since he has undergone bypass surgery, he is in no position to appear before Court for the purposes of evidence. It is submitted by the learned counsel for defendant that the moment, he recovers, he would appear before the learned Trial Court/learned Local Commissioner for recording of his evidence.

9. The issue raised in the present petition is, however, with respect to one witness which the defendant wishes to examine from Canara Bank.

10. It moved an application under Order XVI read with Section 151 CPC claiming therein that said witness i.e. witness from Canara Bank was left out from the list on account of inadvertence and, therefore, it sought permission to examine him. It was also mentioned in the application that in order to prove its defence, the evidence of said witness was crucial for the case.

11. The learned Trial Court *vide* order dated 01.02.2025 observed that '*mere inadvertence*' on the part of such party would not be a ground to allow



such application at subsequent stage.

12. Of course, though the name of the abovesaid official from Canara Bank is not mentioned in the list of witnesses, at the same time, there does not seem to be any ulterior motive in moving the abovesaid application.

13. The issues were framed on 27.02.2025 and the case is, relatively, going at a very quick pace as the evidence of the plaintiff is already complete and the defendant evidence is being recorded.

14. The written statement filed by the defendant contains reference with respect to the cheques in question. Reference be made to paragraphs C to E:-

“C) That it is submitted that the Defendant gave the cheques in question, to the representative of the Plaintiff, at his office in NOIDA, towards the payment due in March 2021, without mentioning any date on the same.

D) That it is further submitted that the Defendant had requested the plaintiff to deposit the said cheques on 08.04.2021 and that further payment of Rs. 15,00,000/- shall be made through RTGS on 09.04.2021. However, the Plaintiff, on 08.04.2021, told the Defendant that the said cheques had been misplaced and that he is not able to trace the same and requested the Defendant to make the entire payment of Rs.40 lakhs through RTGS on 09.04.2021.

E) That the Defendant duly complied with the request of the Plaintiff and made the payment of entire amount of Rs. 40 lakhs through RTGS on 09.04.2021, which is also evident from the running account filed by the Plaintiff. Further, after making the said payment of Rs. 40 lakhs on 09.04.2021, the Defendant made a "stop payment" request to his Bank on 16.04.2021 for the said cheques, after waiting for a period of one week for the Plaintiff to trace and return back the said cheques”

15. Obviously, the defendant has not come up with any surprise to his adversary. Its endeavour is, merely, to examine official from Canara Bank in terms of the stand and defence taken in the written statement.

16. The learned Trial Court seems to have declined the request for the reason that there was no “sufficient cause” shown by the party and that the



word “*inadvertence*” cannot be construed as “part of sufficient cause”.

17. Undoubtedly, the defendant should have been cautious and watchful while submitting list of witnesses but if very rigid approach is taken in this regard, the very purpose and objective of provision, contained under Order XVI CPC, would evaporate in thin air.

18. Additionally, the question of relevancy has also to be considered while deciding any such application and it seems that the attention of the learned Trial Court was not drawn to said effect.

19. The fact, being sought to be proved through the abovesaid witness of Canara Bank, seems to be in consonance with the stand taken in the written statement and even if the name of the witness was not mentioned in the earlier list of witnesses, the Court could have allowed the same, while also imposing certain condition upon the defendant.

20. Learned counsel for respondent/plaintiff appears on advance notice and submits that , though, the petition does not have any merit or substance but in order to avoid any further delay in the matter, he would have no objection, if the matter is allowed, *albeit*, subject to heavy cost.

21. Keeping in mind the overall facts of the case and fact that there does not seem to be any *mala fide* in moving the abovesaid application and also the fact that the witness is sought to be examined in terms of the defence taken in the written statement, the petition is allowed and the petitioner i.e. defendant is permitted to take immediate steps to summon the abovesaid official from Canara Bank. Though, the next date before the learned Trial Court is stated to be 26.05.2025, it will be open to defendant to move application within three working days in this regard, before the learned Trial Court. This is to ensure that there is no further delay in the matter.



22. Simultaneously, for belated filing of the abovesaid application, the defendant is burdened with a cost of Rs. 8,000/- which shall be paid to plaintiff on or before 26.05.2025.
23. Petition stands allowed in aforesaid terms.
24. Pending applications also stand disposed of in aforesaid terms.
25. A copy of this order be given *dasti* under the signatures of Court Master.

(MANOJ JAIN)
JUDGE

MAY 13, 2025/sw/JS